IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.537 OF 2005

Nandkumar @ Hanumanth
Nathu Jadhav,
R/o. Jaymalhar Housing Society,
Sadar Bazar, Satara ..Appellant
(Orig.Applicant)

versus

Sou.Sangita Hanmant Jadhav,
R/o. C/o. Bhiku Laxman Salunkhe,
at Badewadi, Post Bhuinj,
Tal: Wai, District: Satara ..Respondent
(Orig.Opponent)

Mr.Dilip Bodake for the appellant

Mrs.Anjali P. Purav with Mr. V.P.Sawant for the Respondent

Coram : S.R.Sathe, J.
Dated : 14th March, 2006

JUDGMENT.

1. Heard both the learned Advocates at length. Matter heard finally at admission stage.

2. Appellant, the original applicant in Hindu Marriage Petition No.103 of 1998 has preferred this Second Appeal against the judgment and Order passed by the Court of 4th Additional District Judge, Satara in Regular Civil Appeal No.22 of 2002 whereby decree for divorce granted in favour of the applicant-husband on the ground of desertion was set

aside and the original petition for divorce was dismissed. For the sake of convenience, hereafter the parties shall be referred to as Appellant and Respondent.

3. The brief facts leading to this appeal are as under:

. The marriage between the appellant and respondent took place as per Hindu rites on 17.5.1986. The appellant was serving in military at that time. According to him since beginning the respondent wife was not behaving properly and she often used to pick up quarrel with her in laws.. She often used to go to her maiden home without informing the in laws. The Appellant used to get leave once in a year and during that period he used to come to his native place and at that time the respondent used to live with him. Out of the said wedlock a male child was born on 23.3.1988. It is the appellant’s case that few days thereafter respondent again left the house and went to her maiden home and then filed an application for maintenance in the Court of JMFC, Wai. However, the same was dismissed. She also filed Criminal Case

under Section 498A of I.P.C. against the appellant's parents, but they were acquitted in the same. When the respondent had filed Revision Petition in the Sessions Court, Satara, settlement took place between the appellant and the respondent in the year 1993 and then she again started residing with the appellant. Thereafter respondent had another son from the appellant on 6.9.1995. According to appellant, thereafter in April 1996 the respondent went to her maiden home on the pretext that she was not keeping well and would take treatment at her maiden home. However, thereafter she did not return. Hence appellant filed Hindu Marriage petition No.103 of 1998 and claimed divorce on the ground of desertion.

4. The respondent filed written statement and admitted her relation with the appellant as well as the fact that she has given birth to two sons out of the said wedlock. She also admitted that she had filed maintenance application and criminal case against the appellant. The respondent specifically contended that when she was residing at her matrimonial home, she was not treated well by her in laws and even by the appellant and they even used to

insist that she should bring money from her parents and on that count often used to ill-treat her and insult her. As a result of their torture and harassment she was constrained to file criminal case. She specifically denied the allegation that she treated the appellant with cruelty or that she deserted him. On the contrary, she contended that in June 1996 the appellant was posted at Nagpur and at that time i.e. from June 1996 to 1997 she resided with the appellant at Nagpur. Even at that time the appellant used to ill-treat her and used to say that she should give divorce and on that ground used to insist that she should give signature on blank paper. Thus, she contended that she has never deserted him and as such the appellant is not entitled for divorce.

5. Both the parties adduced oral and documentary evidence. After considering the said evidence, the learned 2nd Joint Civil Judge, Senior Division, Satara held that the appellant husband has proved the desertion and therefore granted decree of divorce on the ground of Section 13(1)(ib) of the Hindu Marriage Act.

6. The wife, i.e. the respondent challenged the said decree in the Court of 4th Additional District Judge, Satara. The learned District Judge, after hearing both the learned Advocates came to the conclusion that from the evidence on record it is clear that the respondent has not deserted the appellant and therefore allowed the appeal and dismissed the marriage petition filed by the appellant.

7. From the perusal of the record it is very clear that the appellant has failed to prove the alleged desertion. He has vaguely stated that the respondent left the matrimonial home in April 1996. However, it is pertinent to note that even in the notice which is issued by him to the respondent on 13.6.1997 he had specifically mentioned that they were residing together at Badewadi till 30.5.1997. Even the respondent has specifically stated in her deposition that she stayed with the appellant till June 1997 and thereafter also she was ready and willing to stay, but as a result of the ill-treatment and harassment she was constrained to stay at her maiden home. But even thereafter she had given reply to appellant’s notice and had called

upon him to take her, but he did not take her with him. All this evidence of the respondent wife has practically gone unchallenged. There is no reason to disbelieve the same. On the contrary, the appellant's own notice dated 13.6.1997 clearly shows that his case that respondent deserted him in April 1996 is not true and correct. In that notice he has clearly mentioned that they were residing together till May 1997 and then he stayed with respondent at her parents house till 18.6.1997. So, the first appellate court has rightly held that the appellant husband has failed to prove the desertion. It is crystal clear that animus to deserndi on the part of the respondent is not proved by the appellant. Moreover, the marriage petition is filed in the year 1998. So the statutory period of two years mentioned in Section 13(1)(ib) was also not completed at the time of filing the petition. So, I have absolutely no hesitation to hold that there is no substance in this appeal and the same is liable to be dismissed. Hence, the appeal is dismissed in limine.

(S.R.Sathe, J.)